Supreme Court, U.S.
FILED

FEB 23 2004

CASE NO. 031213

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2003

LAWRENCE MOORE,

Petitioner,

v.

LOCAL UNION NO. 6 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Can a union certified under federal law as "exclusive representative" for a bargaining unit - made up of both union members, and nonmembers - which doesn't include fair share "agency fees" provisions in collective bargaining agreements it negotiates, not act on a nonmember's application (as per federal law) for membership, but still "take" a third of that nonmember's wages for its "dues" and special purpose funds.

LIST OF ALL PARTIES

Petitioner, and Respondents Local 6; a Northern California Electrical Workers Pension Trust; the Northern California Electrical Workers Money Purchase Plan; the Local 6 Health Welfare Plan; Local 6 Training Trust; Local 6 Vacation Pay Fund; Labor-Management Co-op Fund; Judith Fisher; John O'Rourke; Electrical Industry Service Bureau; National Electrical Benefit Fund; and National Electrical Annuity Fund.

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STATEMENT OF JURISDICTIONAL GROUNDS

District court jurisdiction was proper under 28 U.S.C. §§ 1331, 1337 and 1343. An appeal court reviewed lower court orders under 28 U.S.C. § 1291, and this Court can hear this matter under 29 U.S.C. § 1254(1), and its Rule 10.

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STATEMENT OF THE CASE

Plaintiff's first claim in a Complaint filed October 2, 2001 was against all Defendants for violations of the First and Fifth Amendments by "taking" one third of his wages for Union "dues" and its "special purpose Funds" without giving him an option to pay fair share "agency fees," or any "vote" (it did not act on his application for membership), by taking parts of his "overtime wages" *via* its "special purpose Funds" and by kickbacks to employers for deducting the money from his negotiated collective bargaining agreement ("CBA") wage for the Union, and for refusing to stop the wrongful takings.

The wrongful "takings" were also the nexus of a Fourth Cause of Action against Union and its elected-only-by-Union-members CEO O'Rourke for breaches of their duties of fair representation ("DFR"), and of the Second, Third, and Fifth Causes of Action, respectively against all Defendants for common-law frauds and deceit, breaches of contract, and for related intentional infliction of emotional distress.

A prayer for relief asked the court to order Defendants to refund his money, and affirm that the "takings" are illegal, to declare that they may not use CBA job referral procedures (and a Union "hiring hall") to extort the "takings" from non-members, that a "neutral third party" must administer their hiring hall, and to declare that the Fourth Cause of Action may be litigated instead as a "breach of contract" claim.

Plaintiff also asked the court to enjoin Union and Funds from taking nonmembers' wages until required "agency fees" procedures are established, and to require them to notify non-members of their right "to be repaid for years of Defendants' ill-gotten "takings," and for any other relief deemed just.

Defendants filed an **Answer**, and Plaintiff served both Interrogatories, and Requests for Production of Documents on them on March 11, 2002, which all Defendants ignored.

Defendants then filed a "Motion to Dismiss Under FRCP 12(b)(6), and Motion to Strike under Rule 12(f)," which the Plaintiff opposed with his Memorandum and F.R.Civ.P 56(f)

Declarations, with Exhibits describing the information needed to refute their unsupported arguments (specifically describing documents and records he needed to examine), and swearing,

> "All of the above documentation will prove to this Court that the factual allegations in my Complaint related to the claims are true to the extent that 'monies' I earned when working under the CBA between LOCAL 6 and employers, which were not paid to me, and which I alleged were wrongfully 'taken' from me as ostensible 'dues' and 'employer fringe benefit contributions,' were illegally taken in violation of my Constitutional rights, and will prove that I am entitled to a trial on the merits of my Complaint, and declaratory and injunctive relief, and damages."

Plaintiff clearly stated he had signed a CBA out-of-work list, accepted jobs, and applied for membership (which Union ignored) and described, from his own experiences, coercions, intimidations and frauds Union uses to pretend non-members have equal status with Union members in bargaining units it administers (nonmembers have no check and balance vote, or choices, don't know how much Defendants "take" from their wages (or how much is "reciprocated"), and can't even know why they do not have a choice to instead pay "agency fees").

He also clearly showed monies taken from non-members were used for prohibited "political action committees" and "organizing" agendas, and described the theft of $50 million$ from the National Electrical Benefit Fund (it took 3% of his wages) by a self-appointed "life-long Democrat" trustee who converted the money to that Party's National Chairman Terry MacAuliffe, and resigned (under threats of indictment by the Secretary of Labor) and also showed the trustee was replaced by another self-appointed, Washington, D.C. based "trustee" with a history of stealing assets from union ERISA Funds.

An Affidavit by non-member George Spear, who worked in the "bargaining unit" represented by Union over a twenty year period, was filed in district court with the Plaintiff's F.R.Civ.P. 56(f) declarations, and described National Labor Relations Board's documentations of the Union's long history of assaults, internal Union "charges" (without jurisdiction) and default judgments against nonmembers who worked in its "bargaining unit" but couldn't afford to defend against Union abuses of the law and a CBA hiring hall (Fact 8, *infra*, p.8).

On January 28, 2002 the court filed its Memorandum and Order, ignored those Rule 56(f) Declarations to acknowledge Plaintiff owed Union only "agency fees," and that *C.W.A. v. Beck*, 487 U.S. 735, 762-63 (1988) limited Unions' exactions to "agency fees" (correctly citing *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 310 (1986) also for requirements that CBA "agency fees" provisions permit objecting non-members to challenge any amounts set by unions) but then erroneously concluded, at the end of Part "II" of its "Discussion," *via* sophistry, that: "therefore there is no state action"; "a union is not a state actor"; and that it "does not have jurisdiction as primary jurisdiction resides with the NLRB."[1/]

The court permitted Union's CEO (also a self-appointed Funds' "trustee"), and the Funds' administrator, sued only in those capacities, to escape the "breach of contract" claims on grounds that only the Union is "**liable**" for their wrongdoings (a *non-sequitur*) and torpedoed the duty of fair representation

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[1] "Organizing" was the grounds for the plaintiffs' district court lawsuit against the *C.W.A.*, and a district court held *C.W.A.* was a "state actor." See *Beck v. C.W.A.*, 468 F.Supp. 93 (D.Maryland 1979). See also *Communication Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988).

Such C.W.A. and I.B.E.W. local unions are telecommunications industry competitors, frequently raiding each others ranks in the past, and it is possible disgruntled *Beck* plaintiffs may have been, like Plaintiff, members of the separate I.B.E.W. Those two unions, like Local Union No. 6, are legally separate, independent unions.

("DFR") claim against Union and its CEO invalidly.[2/]

On appeal the Ninth Circuit's Memorandum ignored that district court's arbitrary dismissals of Plaintiff's claims, despite comprehensive F.R.Civ.P. 56(f) declarations showing Union had extorted "dues" and "required contributions" for its Funds from him, ignored his membership application and, like Defendants and district court, ignored his comprehensive discovery requests that were properly served on Defendants.

It also ignored district court's "scheduling" of Plaintiff's deposition at a hearing where it said Defendants will then ask for summary judgment on remaining claims for breach of the DFR, and CBA and IBEW constitution contracts (in violation of L.M.R.A.§ 301) to affirm dismissal: of his Constitutional claims (on grounds Union Defendants are not "state actors"); of Union and Funds officers (on grounds there is no basis for an action for breach of contract or DFR against individuals); and of fraud and intentional infliction of emotional distress claims on ironic grounds L.M.R.A. § 301 *preempts* them.[3/]

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[2] The court called San Francisco Union's "jurisdiction," *equated* it with a bargaining unit it represents and the IBEW in using terms like working dues, contributions and benefits to ignore **takings** and facts related to a National Electrical Benefit Fund that takes 5% of CBA wages without CBA "standing" (a Maryland Court's *Consent Order* attached to Plaintiff's FRCivP 56(f) declarations showed its $50 million$ frauds involving the chairman of a national political Party, and a $4.5 million$ fine against IBEW's Secretary (a self-appointed NEBF trustee), and his "resignation" to avoid jail. The court first stated Plaintiff was not a "member," and demonized him as different from *Beck* plaintiffs, argued "membership" issues, and misrepresented sections of IBEW's "constitution" related to parties' contracts (one jury *picketed* the US courthouse after such abuses).

[3] Union is LMRA § 158(a)(3) *certified* as exclusive representative for all bargaining unit workers including non-members, and has an LMRA § 160 duty to represent them all "fairly" (see *infra*, p. 00), and LMRA § 301(b) (29 U.S.C. § 185) permits breach of contract suits against union agents but makes unions liable for wrongdoing.

The court also duplicitously argued a contract between the Plaintiff and Defendant O'Rourke created by a "constitution" of a separate, Washington, D.C. based union (requiring them to not cause each other economic harm), and a CBA contract between Plaintiff and all the Defendants, were not breached by their "taking" his wages (in the face of Union's bad faith denial of a check-and-balance "vote" on the "takings" by not acting on his CBA "security clause" membership application) and ruled he "failed to state a claim ... under *Wooddell*."[4/]

The appeal court first held Plaintiff "did not state a claim [against Defendant Union] as a nonmember under *C.W.A. v. Beck*, 487 U.S. 735 (1988)" but changed it to admit he is not a "member," and relied instead on its companion falsity that Union is not a "state actor," decided in the face of *Beck*.

It misrepresented L.M.R.A. § 160(b)'s 6-months statute of limitations "governed" breach of contract and DFR claims (but see *Reed v. United Transp. Union*, 488 U.S. 317 (1989)) and that "district court did not err in concluding additional discovery would not shed any light on ... claims or uncover facts precluding summary judgment," *citing U.S. Cellular Inv. Company of Los Angeles, Inc. v. GTE Mobilnet, Inc.*, 281 F.3d 929, 939 (9th Cir. 2002), but failed to explain why the district court had not permitted Plaintiff's Opposition to Summary Judgment memorandum, and a supporting F.R.Civ. P. 56(f) declaration of relevant facts to even be filed below, or why the same "compulsory union" abuses the L.M.R.A. and L.M.R.D.A. were passed half a century ago to eliminate are still used by union hiring halls to take employees' wages.

Plaintiff petitioned the Ninth Circuit for a rehearing after it admitted he was not a "member" of Defendant Union, but it was denied by an Order filed on November 24, 2003.

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[4] This Court has ruled repeatedly that the "constitutions" of such "international unions" are "contracts" between international unions and the "separate" local unions that affiliate with them. *Wooddell v. IBEW Local 71*, 502 U.S. 93 (1991); *Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615 (1981).

STATEMENT OF FACTS

1. The L.M.R.A. and the Labor-Management Reporting and Disclosure Act ("LMRDA") were enacted by Congress for protection against "takings" from workers paychecks,

> "to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the [L.M.R.A.] (1947), as amended, and Railway Labor Act, as amended ...."

LMRDA § 2 (1959) (29 U.S.C. 401).

2. LMRDA § 3(o) (29 U.S.C. 402) further states,

> "'Member' or 'member in good standing,' when used in reference to a labor organization, includes any person who has fulfilled requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor been expelled or suspended from membership after appropriate proceedings consistent with the lawful provisions of the constitution and bylaws of such organization."

3. Plaintiff was denied "membership" in Local 6 and cannot even vote on the CBAs where he is a Bargaining Unit worker. See the IBEW president's letter at APX 00.

4. I.B.E.W. and local unions that "affiliate" with it are all separate unions bound only by a "constitution" contract. *See Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615, 624, 101 S.Ct. 2546, 2551, 69 L.Ed.2d 280 (1981); *Wooddell v. I.B.E.W.*, 502 U.S. 93,

112 S.Ct. 494, 116 L.Ed.2d 419 (1991).

5. Plaintiff agreed, as a "member" of the I.B.E.W., that the I.B.E.W. constitution is a "contract" between him and all I.B.E.W. members, and between him and any affiliated local union where he also becomes a "member." *Infra*, pp.11-12.

6. Plaintiff automatically became a "**member**" of that I.B.E.W. when he first joined an affiliated local union in 1958, and his contract extended to other I.B.E.W. members, **but did not extend to other local unions**. *Infra*, pp.11-12.

7. The I.B.E.W. constitution provides for "transfers" between local unions with similar classes of electricians by presenting a "traveling card" to a transferee union, and such transfers are normal in all local unions except "construction" local unions, which operate CBA-created "hiring halls" they abuse to extort and intimidate $million$ of dollars from the nonmembers in "bargaining units" they "administer" pursuant to federal law. See LMRA § 158(a)(3), pp. 10, n.6, 11-13.

8. Plaintiff presented a traveling card to Local Union No. 6 in San Francisco but it was ignored, and he knew from experience that presentation of such a traveling card could provoke discriminations, assaults, and batteries by persons in that Union who had vested interests in "taking" monies from the paychecks of the "nonmembers" who work in "bargaining units" Local 6 represents, because he was blacklisted from employment, threatened, and assaulted (and/or battered") by members of other, similarly tribalistic local unions (e.g., Local 8, 58 and 569, in Ohio, in Michigan and in San Diego respectively) after he filed internal I.B.E.W. charges against those unions' officers or sued them over such "takings" from non-members, or filed "unfair labor practice" charges against them with the National Labor Relations Board and he is very aware of Local 6's tribalistic history. *See I.B.E.W. Local 6, AFL-CIO (San Francisco Electrical Contractors Assoc.), and Michael Berkowitz, et al.*, 318 N.L.R.B. No.7 (1995), and see George Spear's affidavit filed with Plaintiff's F.R.Civ.P. Declarations in support of his opposition to the Defendants' dispositive motions below.

REASONS FOR GRANTING THE WRIT

I. This petition should be granted to review a ruling that union takings from non-members' wages without "due process," which conflicted with decisions by this Court and another court of appeals, departed from the usual courses of judicial proceedings, and require the exercise of this Court's powers of supervision.

The Ninth Circuit affirmed lower court rulings Union is not a "state actor," and used various aberrations of the law (other than the *National Labor Relations Board* has exclusive jurisdiction over Constitutional claims) to affirm its other rulings, but amended its decision Plaintiff is a Union member in a supplemental Order correctly stating he is *not a member*.

A union certified by L.M.R.A. § 158(a)(3)(29 U.S.C. § 158) as exclusive representative for any "bargaining unit" employed *via* CBAs **is a "state actor."** *See Communication Workers of America v. Beck*, 487 U.S. 735, 736-37, 108 S. Ct. 2641, 2643-44, 101 L.Ed.2d (1988)(*Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961) is controlling, a union **certified** as "exclusive representative" cannot expend funds collected from nonmembers on activities unrelated to collective bargaining, and unions are authorized to collect only those fees necessary to finance collective bargaining activities from nonmembers).[5/]

Despite that reasoning in *Beck*, the instant appeal court begged the question whether Union, properly *certified* under LMRA § 158(a)(3) as the *exclusive representative* of a CBA "bargaining unit" of both Union members and nonmembers, isn't a "state actor" within the meaning of *Intern'l Assoc. of Machinists v. Street*, 367 U.S. 740 (1961).

However, this Court decided in *Beck* and in *Street* unions *certified* as CBA exclusive representatives are "state actors."

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[5] *Beck* uses outdated "NLRA," rather than "LMRA," cites.

Further, the Supreme Court also ruled in *Communication Workers of America v. Beck*, at n.7, that,

> "[m]onies collected for a [union's special purpose funds] ... are obviously not 'for the maintenance of the' [union] as an organization, but are for a 'special purpose' and could be terminated without affecting *the continued existence of [the union] as the bargaining representative*.

487 U.S. 735, 752, 108 S.Ct. 2641, 2652, *citing Teamsters Local No. 959*, 167 N.L.R.B. 1042 (1967).[6/]

The *stare decisis* doctrine, that Supreme Court decisions are binding precedent on lower courts in subsequent cases where the same point is raised again in controversy, and that decisions of courts of equal rank are also binding authority when the same point is in controversy, was abused by district court and the court of appeals below.

Before this Court's *Beck* decision the issues were argued, and settled in district and appeal courts. *Beck v. C.W.A.*, 468 F.Supp. 93 (D.Md. 1979) (union can exact agency fees from nonmembers for CBA expenses, but other "takings" violated their Constitutional rights); *aff'd*, 776 F.2d 1187 (4th Cir. 1985); *aff'd en banc*, 800 F.2d 1280 (1986).

LMRA § 158(a)(3)"exclusive representative" unions must accept security clause duties to offer *membership* and *agency fee* alternatives to all CBA employees, or forego "takings."

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[6] Union negotiates hourly wages in its dual role as *bargaining unit representative* and its members vote to defer part of the wages into income tax-exempt Voluntary Employees Beneficiary Associations in its closed-to-nonmembers meetings (treating its rigged minority-of-members votes as controlling on all its members, which courts may consider "legal") but also "take" the amounts from the wages of nonmembers not represented on Union Funds' boards of trustees knowing their nonpreferred hiring hall status will cause forfeiture.

Plaintiff wasn't a member of Defendant Union, he did not agree to participate in the Union's special purpose Funds, which must be approved under Internal Revenue Code § 501 as *Voluntary Employees' Beneficiary Associations* to receive "deferred" parts of CBA employees wages they call **required contributions**, and IBEW was not a party to litigation below.

Plaintiff's suit is for return of those monies "taken" from him, but district court denigrated his membership application (after Union didn't make its CBA security clause-mandated offer) as "*immaterial*" (APX 00) because he wouldn't get any check-and-balance Union "vote" until six months after being accepted (a surprise to politicians spending $million$ now for votes in November, 2004), and misread IBEW's constitution:

> The acceptance of an application for membership, and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U. and the I.B.E.W., and between such member and all other members of the I.B.E.W.

Article XX, § 3 (see APX 00). The constitution is a contract between those two "separate" unions, *see Wooddell v. IBEW Local 71*, 502 U.S. 93 (1991), the section **is not** a contract between Plaintiff and Defendant Union - only because he was denied membership despite its security clause - but **it is** a contract between Plaintiff and Union CEO O'Rourke, and **it is** required to live up to its CBAs by the IBEW constitution. *See Wooddell*, 502 U.S. 93, 101 (1991), *citing Plumbers and Pipefitters v. Plumbers and Pipefitters Local 334*, 452 U.S. 615 (1981). Plaintiff's suit against Union and its CEO did not fail "as a matter of law" because he was a "voluntary member of the [separate] IBEW for the last 44 years" - which is not relevant - but failed because the law, and facts were misinterpreted below.

The IBEW constitution contract's "membership" section specifically excludes any contract between an IBEW member

and any local union where he is not also its member, and the collective votes of its members to defer parts of their wages into its "VEBA" Funds are therefore not binding on him.[7]

Plaintiff's declaratory relief requests - on prohibiting the Defendant Union from administering the CBA employers' job Referral Procedure, in light of its checkered past of reserving "preferred" Group One status for its members (documented in his F.R.Civ.P. 56(f) declarations below) - were not even addressed by the district court, who overtly preferred to deal in polemics, rather than judge the issues on their merits, and did not even comment on requested declaratory relief from Union's "taking" of his property for its "dues" and its Funds' "required contributions" (sic).

Ironically, this instant Union has continued "compulsory union" takings of employees' wages the Labor Management Relations Act, and the Labor-Management Reporting and Disclosure Act are designed to terminate, by instead passing "enforcement" duties on to its members who must protect their "preferred" status on a CBA job Referral Procedure "out-of-work list" (and supervisory positions) by ostracizings, blacklistings, assaults, batteries, "internal Union" disciplinary procedures (used, like the instant district court, by distorting the related law, and facts), and default court judgments (after driving protestors off) to enforce lay-off practices that make nonmembers "last hired and first fired." *See I.B.E.W. Local 6, AFL-CIO (San Francisco Electrical Contractors Assoc.), and Michael Berkowitz, et al.*, 318 N.L.R.B. No. 7 (1995).

While courts below preferred to frame the issues before them only in terms of union "membership," the issues really also implicate the rights and duties under our social-contract U.S. Constitution, as well as that I.B.E.W. "contract."

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[7] There are at least forty other types of employees who are IBEW members and universally transfer such "local" membership to other unions covering their type of work, including construction linemen who bring electricity to those places where Union's members work and instant Union has no good reason for not accepting transfers.

This Court decided Union may *get* "agency fees" from non-members who refuse "membership" offered pursuant to Union's CBA security clause, but Union's "all-or-nothing" practices, backed up by ostracizings, blacklistings, and assaults, and batteries, violated the Union's "DFR" because,

> "obviously, once ... determined that the dues were not for collective bargaining purposes [or] 'for the maintenance of the [union] as an organization' [Funds] could be terminated without affecting the continued existence of [the union] as the bargaining representative."

CWA v. Beck., 108 S.Ct. at 2652-53, n.7.

Defendant Union must be limited to the liberal "benefits" provided by LMRA § 158(a)(3) when taking a non-member's wage it negotiated in its dual *exclusive representative* role - by misrepresenting the "takings" are "required contributions" by CBA employers. Union must comply with a CBA security clause duty to offer *membership* before exacting "takings" for "dues" or "special purpose Funds" from non-members, and the "takings" are limited by law to *fair share agency fees* if the non-members decline that offer of membership.

But if Union does not make a required membership offer, or refuses to act on an application for membership - as here - and refuses to provide for "agency fees" alternatives, relying instead - as here - on its ability to extort full "takings" from non-members' property, it may not "take" anything.

In the instant case the outrageous last scenario is the **rule** but lower courts embraced Union's absolute refusal to act on Plaintiff's membership application, by endorsing Union's all-or-nothing Funds' extortions included in CBAs, and denying nonmembers in the bargaining unit a vote on the CBA.[8/]

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[8] See IBEW president's no-voice-or-vote *Notice* at Addendum 00.

Union and Union Funds did commit fraud by taking nonmembers' wages but the court short-circuited "discovery" to prevent exposure of a full scheme and pattern of behavior.

Other claims also ancillary to U.S. Constitutional claims were dismissed on frivolous grounds they were timebarred or preempted by LMRA § 301 (29 U.S.C. § 185). But as the district court that first reviewed the *Beck* claims held,

> [T]he law does not require an affirmative demonstration of protest as a condition precedent to bringing suit. All that is required is that an individual dissenter make known his position so that, in fairness to the union, no one who does *not* object to the union's political expenditures is able to secure relief.

Beck v. Communications Wkrs. of America, 466 F.Supp. 93 (D.Md. 1979) (agency fees agreement allowed takings other than for collective bargaining, and CBA administrations).

Further, this Court's decisions on both preemption and a "timebarred" issue again prove instant claims are viable. *See Pendent Federal Jurisdiction*, 75 A.L.R.Fed. 600, *citing United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130 16 L.Ed.2d 218 (1966)(pendent jurisdiction exists if a claim under the Constitution and state claim are one constitutional "case," the federal claim gives the court "jurisdiction," and both state, and federal claims derive from a common nucleus of operative fact); *Young v. Anthony's Fish Grottos Inc.*, 830 F.2d 993, 999 (9th Cir. 1977)(Union and funds based frauds are not legal CBA related acts, but their close relationship to Constitutional and LMRA § 301 claims defeats preemption). *Reed v. United Transp. Union.*, 488 U.S. 317, 109 S.Ct. 621, 102 L.Ed.2d 90 (1989)(claims with indirect impact on labor peace use state statutes of limitations), *citing Owens v. Okure*, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989) (suit protecting First Amendment rights is governed by state personal injury statute of limitations).

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Labor Management Relations Act § 158 (29 U.S.C. 158)

(a) Unfair Labor practices by employer

(3) It shall be an unfair labor practice for an employer - by discrimination in regard to hire or tenure or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) **to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later**, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(f) Agreement covering employees in the building and construction industry

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction industry employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making if such agreement, or (2) **such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later**, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to subsection (a)(3) of this section: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

* These clauses in § 158(a)(3) and here are "union security clauses" requiring that CBA employees join the unions.

Labor-Management Reporting and Disclosure Act

Declarations of Findings, Purposes, and Policy:

Sec. 2(b). (29 U.S.C. 401) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplemental legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce ....

Definitions: Sec. 3(o). (29 U.S.C. 402)

For the purposes of titles I, II, III, IV, V (except § 505), and VI of this Act - "Member" or "member in good standing" when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership ....

Title I - Bill of Rights of Members (29 U.S.C. 411):

Sec. 101(a)(1). Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections ..., to attend membership meetings and to participate in the deliberations and voting ... subject to reasonable rules and regulations ....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
1125 Fifteenth Street, N.W.
Washington, D.C. 20005

TO ALL IBEW LOCAL UNIONS IN THE UNITED STATES AND CANADA:

Dear Sisters and Brothers:

Some questions have recently arisen about the meaning of the amendment of Article XXIV, Section 1, of the IBEW Constitution, at the 1996 Convention. The purpose of this letter is to provide you with my interpretation, pursuant to my authority under Article IV, Section 3(2), of the IBEW Constitution, of the meaning of amended Article XXIV, Section 1. I want to make certain that there is a uniform interpretation and application of this provision throughout the Brotherhood.

The old Article XXIV, Section 1, had the same rule for a member traveling, or visiting, a Local Union, and said that both *"shall"* be admitted to its meetings. The clear intent of the amendment offered by Local Union 1049 was to change the *"shall"* to *"may"* and specify that both the traveling and visiting member would have no voice or vote. Under the substitute resolution submitted by the Law Committee, there are separate provisions for members working in a different Local's jurisdiction and a member visiting a different Local.

With respect to the *visiting* member the new language clearly states that he or she "may" be admitted to the meeting - at the option of the Local union in question - but without voice

(Several erroneous statements made during the debate about legal requirements are likely to have confused the issue, and it is in part for that reason that I find it necessary to provide this interpretation for the new provision.)

or vote. Under the amendment, a member *working* in a different Local's jurisdiction *"shall"* be admitted to its meeting *(as under this provision before the amendment)*, but that paragraph is silent with respect to whether the traveling member has a voice or vote.

Based on the language of the amendment, offered by Local Union 1049, and the essence of the discussion during the debate on the amendment, it is my interpretation that although the traveling member has the right to attend a Local Union meeting, **he does so without voice or vote.**

In sum, Article XXIV, Section 1, is interpreted as follows:

1. A *traveling* member working in another Local union's jurisdiction *shall* be admitted to its meetings. he is not, however, a member of the second Local Union because of this amendment. Nor is he entitled to voice or vote on collective bargaining agreements or any other issues, and he most certainly is not eligible to vote in internal elections within that Local Union.

In other words, there are no rights granted to the traveler other than having the right to attend the Local union meeting. As noted above, the intent of the two paragraphs in this section is only to distinguish between a traveling member employed in the Local union's jurisdiction and a visiting member not employed in the Local union's jurisdiction.

2. When a member wishes to *visit* a different Local Union, that Local Union *may* - but is not required to - admit that member to its meetings. The visiting member has no voice or vote at the meeting.

Dated: May 5, 1997

J.J. Barry
International President

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Lawrence Moore	) CASE No. 01-03733
	)
Plaintiff/Appellant,	) MEMORANDUM
v.	) AND
Int. B'hood of Elect.	) ORDER
Wkrs. Local 6, et al,	)
	)
Defendants/Appellees	)

Now before the Court is the motion for summary judgment of defendant International Brotherhood of Electrical Workers Local 6 ("IBEW Local 6"). Defendant moves for judgment on the two claims remaining in this action: breach of contract and breach of the duty of fair representation. After carefully considering the papers filed by the parties, and having had the benefit of oral argument, the Court GRANTS defendants' motion.

UNDISPUTED FACTS

Plaintiff lawrence Moore filed this complaint in pro per. Moore is an electrician who is a member of the IBEW, Local 569 in San Diego, but is not a member of defendant Local 6.

In the IBEW a union member may pay two types of dues. The member pays "basic" dues to the local to which he belongs (the "home local") and, if the member is working outside the jurisdiction of his home local, he pays "working dues" to the local where he is working. Moore has twice worked in Local 6's jurisdiction. First, in May and June 1998, and second, in March and April 2000. Moore paid working dues to Local 6 for May and June 1998 and April 2000.

Pursuant to the Local 6 collective bargaining agreement ("CBA") with the San Francisco Electrical Contractors Association, employers make contributions for pension, health and welfare and other benefits for each union member based on the number of hours worked. Local 6's benefit funds participate in the National Reciprocity Agreement

whereby a traveling union member paying working dues may request that the Local forward contributions made on his behalf to his home local, subject to certain time restrictions and rules. In April 2000, Moore timely requested such reciprocity for the contributions to be made on his behalf in 2000. He did not do so for the 1998 contributions.

On March 1, 2000, Moore wrote the Board of Trustees of the San Francisco Electrical Industry Accounts and advised them that he had recently realized that in 1998 he had neglected to complete reciprocity forms. he requested that the contributions (Moore refers to those amounts as withholdings) made in 1998 in his behalf be forwarded to Local 8 in Ohio. One year later Moore wrote the Business Manager of Local 6 again requesting that the contributions made on his behalf in 1998 be transferred to Local 8. The Plan Manager for the Northern California Electrical Workers Pension Trust responded that the Reciprocity Agreement provides that the effective date for transferring contributions is the first of the month in which the authorization is signed. Since Moore's authorization was not signed until 2000, it was not effective for transferring contributions med nearly two years earlier, in 1998.

PROCEDURAL HISTORY

Moore filed this lawsuit in October 2001. The original complaint alleged the following: (1) a First and Fifth Amendment claim concerning improper use of union fees; (2) a state law claim for fraud or deceit concerning use of fees; (3) a claim for breach of contract; (4) a claim for breach of duty of fair representation; and (5) a state law claim for intentional infliction of emotional distress. All five causes of action arose from various alleged infractions by the union with respect to its use of dues and contributions pursuant to the CBA. Moore named the following defendants: IBEW Local 6, John O'Rourke (the business manager of Local 6), various employee-benefit trusts (the Northern California Electrical Workers Pensions Trust, The Electrical Workers Health and Welfare Trust of San Francisco, and The San

Francisco County Electrical Industry Apprenticeship and Training Trust, the Electrical Industry Service Bureau ("EISB") and the EISB's administrator Judith Fisher.

The Court dismissed all of the defendants, except IBEW Local 6, and all claims except two: the third cause of action for breach of contract alleging that money was taken from Moore's wages for the various trusts and funds without his approval, and the fourth cause of action for breach of the duty of fair representation alleging that the fees collected were used for purposes other than collective bargaining. Defendant IBEW Local 6 now moves for summary judgment on these two issues.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute is "material" only if it could affect the outcome of the suit under governing law. See Anderson V. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A principal purpose of the summary judgment procedure "is to isolate and dispose of factually unsupported claims." Celotex Corp. v. Catrett, 477 U.s. 317, 323-24 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

"In considering a motion for summary judgment, the court may not weigh the evidence or make credibility determinations, and is required to draw all reasonable inferences in a light most favorable to the non-moving party." Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997). An inference may be drawn in favor of the non-

moving party, however, only if the inference is "rational" or "reasonable" under the governing substantive law. See Matsushita, 477 U.S. at 588.

DISCUSSION

I. The Breach of Contract Claim

Plaintiff's third cause of action alleges defendant breached the IBEW constitution by causing him "economic harm." On particular, the complaint alleges defendant breached "knowingly" took Moore's wage and overtime pay for benefits, and refused to refund fees. At the deposition, defendant asked Moore about "what in particular [he] contend[s] in the constitution that Local 6 violated?" Moore responded that under the Supreme Court's Wooddell case a local must abide by its CBA, and Local 6 filed to do so by causing Moore economic harm. Moore further explained that the CBA "has things in there that I believe should not be in there," and in particular, that Local 6 breached the CBA by putting in the CBA that it could withhold certain funds. In his summary judgment opposition, Moore claims Local 6 breached the constitution and the CBA by taking "working dues" and benefit pay from Moore, yet not giving him a vote on how those monies are spent. As support for his claim, Moore cites Communication Workers of America v. Beck, 487 U.S. 735 (1988), and its progeny.

The Beck plaintiffs were employees who chose not to become members of the governing union; they challenged the union's collection of "agency fees" from them to the extent the union used the fees for purposes other than collective bargaining. The Supreme Court concluded that the National Labor Relations Act ("NLRA") § 8(a)(3) permits an employer and a union to enter into a CBA that requires all employees to become union members as a condition of continued employment; however, the employer and union cannot *require* the involuntary union members to pay dues to support union activities "beyond those germane to collective bargaining." Id., at 745. Moore appears to argue that

because he is not a member of Local 6, under Beck the union cannot collect working dues from him for activities other than collective bargaining and the union cannot agree to have employers make benefit contributions on his behalf (or, as moore characterizes it, to have money withheld from his paycheck for benefits).

Beck does not apply to Moore's claims. The Beck plaintiffs were not union members, but were nonetheless required, as a condition of employment, to pay union dues. Moore, in contrast, voluntarily chose to become a member of the IBEW; indeed he admits that he has been a member of the IBEW for more than 44 years. moore does not cite any case, and the Court is aware of none, in which a member of a different local of the same international union stated a claim under Beck in connection with the payment of working dues.

The fact that Moore was not a voting member of Local 6 is immaterial. Article XX, § 3 of the IBEW constitution provides that the "admission of the applicant into any L.U. [local union] of the I.B.E.W. constitutes a contract between a member, the L.U. and the I.B.E.W., and between such member and all other members of the I.B.E.W." Moore thus voluntarily agreed to be bound by the IBEW constitution. The IBEW constitution specifically provides for a member admitted to a local "on a traveling card shall not vote on questions of agreement, trouble or wages, until six (6) months after his card has been accepted, nor shall he be permitted to vote in the L.U. election unless he has been a member in the L.U. sixty (60) days prior to the election." IBEW Constitution, ART. XXIII, § 13. It is undisputed that Moore never worked in Local 6 for more than 60 days. Thus, under the IBEW constitution to which Moore voluntarily agreed he was not permitted to vote. Cf., Bullock v. Sweeney, 644 F.Supp. 507 (N.D.Cal. 1986)(dismissing claim against local by traveling member of different local challenging payment of working dues).

The Court takes judicial notice of the fact that Moore's

claim in nearly identical to one he filed last year in the United States District Court, Eastern District of Michigan. In that case Moore paid "working dues" when he worked in Local 58 in the Detroit area. Although Local 58's benefit funds had a reciprocity agreement, Moore neglected to complete the reciprocity and did not realize his error until nearly two years later. Moore's request to retroactively transfer the contributions made on his behalf while working with Local 58 was denied. Moore filed suit making several claims and contended, as he does here, that his Beck rights were violated. The district court rejected his claim finding that Beck is inapplicable because Moore is a voluntary member of the IBEW. Moore v. IBEW Local 58, 01-72222 (E.D.Mich. 2001).

In sum, Moore claims Local 6 breached the IBEW constitution and the CBA by following the CBA and IBEW constitution and requiring Moore to pay working dues even though he is not a voting member of Local 6. Because Moore is and has been a voluntary member of the IBEw for the last 44 years, Moore's claim fails as a matter of law.

II. Breach of the Duty of Fair Representation

In his fourth cause of action Moore alleges defendant Local 6 breached its duty of fair representation by negotiating certain provisions of the CBA, including those provisions requiring the payment of working dues and employer contributions to various trust funds. He again alleges the CBA provisions are unlawful because he is "a non-member of Local 6." As is set forth above, this claim fails because Moore is and was a member of the IBEW and voluntarily agreed to abide by the IBEW constitution and the CBAs negotiated by its various locals. Local 6 did not breach its duty of fair representation to Moore by following the provisions of the CBA.

Moore's self-described duty of fair representation claim fails for a second, independent reason: the claim is barred by the statute of limitations. Moore claims that Local 6 treated him unfairly by requiring him to pay dues but not providing

him with a vote. Claims against unions for breach of the duty of fair representation are governed by the six-month statute of limitations found at section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). See Conley v. International Broth. of Elec. Workers, Local 639, 810 F.2d 913, 915 (9th Cir. 1987). The limitations period began to run, at the least, in May 2000 - the last time he worked within the jurisdiction of Local 6. This lawsuit was not filed until October 2001. Accordingly, Moore's claim for breach of the duty of fair representation os time-barred.

III. Rule 56(f) Request

Moore moves pursuant to Federal Rule of Civil Procedure 56(f) to continue the summary judgment motion to permit him to take discovery. "Federal Rule of Civil Procedure 56(f) provides that if a party opposing summary judgment demonstrates a need for further discovery in order to obtain facts essential to justify the party's opposition, the trial court may deny the motion for summary judgment or continue the hearing to allow for such discovery. In making a Rule 56(f) motion, a party opposing summary judgment "must make clear what information is sought and how it would preclude summary judgment." Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998)(citation omitted). Moore has not demonstrated how the information he seeks would preclude summary judgment. The issue presented is straightforward: may Moore, as a member of a different local of the IBEW, make a claim against defendant Local 6 under Beck. The discovery Moore seeks will not shed any light on this question.

CONCLUSION

For the foregoing reasons, defendant's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

Filed: June 12, 2003

Charles R. Breyer
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Lawrence Moore Plaintiff/Appellant, v. Int. B'hood of Elect. Wkrs. Local 6, *et al*, Defendants/Appellees	CASE No. 01-03733 JUDGMENT

The court having granted the motion for summary judgment by order dated June 4, 2002, it is hereby ordered that judgment be entered in favor of defendants and against plaintiff.

IT IS SO ORDERED.

Filed: June 4, 2002

Charles R. Breyer
U.S. District Judge

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Lawrence Moore	No. 02-16485
Plaintiff/Appellant,	D.C. No. 01-03733
v.	
Int. B'hood of Elect. Wkrs. Local 6, et al,	MEMORANDUM*
Defendants/Appellees	

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted May 13, 2003**

Before: CHOY, FARRIS, and LEAVY, Circuit Judges.

Lawrence Moore, proceeding pro se, appeals the judgment of the district court granting summary judgment to defendants. We have jurisdiction pursuant to 28 U.S.C. § 1291, and, upon de novo review, we affirm. Because the parties are familiar with the factual and procedural history of this case, we need not recount it here.

Moore asserts that the district court erred in dismissing his claims that the defendants violated the First and Fifth Amendments to the United States Constitution. The district court did not err in concluding that the defendant union and its individual officials are not state actors. Therefore,

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2).

Moore's claims alleging constitutional violations are not actionable. Lugar v. Edmondson Oil Co., 457 U.S. 922, 936-37 (1982).

Moore asserts that the district court erred in dismissing his claims against individual union officers for breach of contract and breach of duty of fair representation pursuant to Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. The district court did not err in concluding that Section 301 provides the basis for an action for breach of contract or breach of the duty of fair representation only against a union as an entity. See Carter v. Smith Food King, 765 F.2d 916, 920-21 (9th Cir. 1985).

Moore asserts that the district court erred in dismissing his claims for fraud and intentional infliction of emotional distress. The district court did not err in concluding that Moore's claims were state law claims which are preempted by section 310 (sic) of the LMRA. See id. at 921.

Moore asserts that the district court erred in granting summary judgment for Local 6 on Moore's claims for breach of contract and breach of the duty of fair representation. Moore argues that Local 6 breached the IBEW constitution and the collective bargaining agreement by taking dues and pay from Moore, but not giving him a voice or vote on how those funds are spent. The district court did not err in determining that Moore did not state a claim as a union nonmember under Communication Workers of America v. Beck, 487 U.S. 735 (1988). Moore is a voluntary, longtime union member of International Brotherhood of Electrical Workers ("IBEW"). Moore worked for period of time through Local 6 of the IBEW in San Francisco, but did become a member of that local. However, at all times, Moore remained a member of IBEW. As such, he is not a "nonmember" similar to the nonunion employee plaintiffs in Beck.

Moore has also failed to state a claim for violation of the union's constitution under Wooddell v. IBEW, Local 71, 502 U.S. 93 (1991). The IBEW constitution sets forth specific

provisions regarding the rights and duties if a union member working in a different local union. Moore has failed to show that the IBEW constitution was violated regarding his choice to work through Local 6 in 1998 and 2000.

Both the breach of duty of fair representation and breach of contract claims are governed by the six-months statute of limitations period in section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). See Moore v. Local 569 of the IBEW, 989 F.2d 1534, 1542 (9th Cir. 1993). Moore worked through Local 6 in May and June 1998, and in March and April 2000. Moore should have known of any breach of the duty of fair representation or breach of contract when he completed the work through Local 6 ending in April 2000. Moore filed his complaint in October, 2001. Therefore, the claims for breach of contract and breach of duty of fair representation are, in any event, time-barred.

Moore asserts that the district court erred in denying him additional discovery pursuant to Fed.R.Civ.P. 56(f). The district court did not err in concluding that Moore's request for additional discovery would not shed any light on Moore's legal claims or uncover facts precluding summary judgment. United States Cellular Investment Company of Los Angeles, Inc. v. Mobilnet, Inc., 281 F.3d 929, 939 (9th Cir. 2002).

We have considered Moore's remaining arguments and find them to be without merit.

AFFIRMED.

Filed: AUG 07, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Lawrence Moore	)	No. 02-16485
	)	
Plaintiff/Appellant,	)	D.C. No. 01-03733
v.	)	Northern District
Int. B'hood of Elect.	)	of California,
Wkrs. Local 6, *et al*,	)	San Francisco
	)	
Defendants/Appellees	)	ORDER

Before: CHOY, FARRIS. and LEAVY, Circuit Judges.

The memorandum disposition filed on August 7, 2003, is amended as follows: on page 3, paragraph 1, line 10 should read: "...but did not become a member of that local...."

Filed: OCT 07, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Lawrence Moore	) No. 02-16485
	)
Plaintiff/Appellant,	) D.C. No. 01-03733
v.	) Northern District
Int. B'hood of Elect.	) of California,
Wkrs. Local 6, *et al*,	) San Francisco
	)
Defendants/Appellees	) ORDER

Before: CHOY, FARRIS. and LEAVY, Circuit Judges.

The panel has voted to deny the petition for rehearing and recommends denial of the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed.R.App.P. 35. The petition for rehearing and the petition for rehearing en banc are denied.

Filed: NOV 24, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals